

# General Terms and Conditions of Purchasing Baumer (TOP Baumer)

Last revised: 10/01/2017

## 1. Scope of Application and Contractual Basis

These General Terms and Conditions of Purchasing, hereafter known as Purchasing Terms, govern all procurement activities of all companies of Baumer Group, hereinafter known as "BAUMER" or the "contracting BAUMER company".

- a. Any and all contracts related to the procurement of products, materials, raw materials, tools, or spare parts (hereinafter: "Products") by BAUMER, regardless of whether pursuant to framework agreements, release orders, or separate contracts, shall be governed solely and exclusively by these Purchasing Terms as most recently revised. The application of any divergent terms and conditions of business of our business partner (hereinafter: the SUPPLIER) regardless of the form, is excluded.
- b. In the event of contradictions concerning the nature and scope of the mutual services, rights, obligations, and claims, the provisions of the following agreements — if and when such agreements have been concluded — shall apply in the following order:
  - Provisions of the specific order
  - Any non-disclosure agreements (NDA) concluded between the parties
  - Any other special agreements
  - Any cooperation agreements concluded between the parties
  - These Purchasing Terms

## 2. Queries, Quotations, and Orders

- a. Any queries submitted by BAUMER are non-binding. The SUPPLIER will prepare quotations free of charge.
- b. BAUMER does not acknowledge any orders that have not been submitted by the BAUMER Purchasing Department. Modifications of or amendments to the orders are binding only if and when BAUMER has confirmed them in text form (fax, e-mail acceptable; hereinafter: "TEXT FORM").

## 3. Periods, Dates, Default of Delivery, Force Majeure

- a. The agreed delivery dates are binding deadlines and are shown as the arrival dates at the shipping address. Failure to deliver in accordance with agreed deadlines shall be deemed default of delivery without issue of warning notices.
- b. The SUPPLIER is obligated to notify BAUMER without delay if and when circumstances that prevent compliance with the agreed delivery dates and periods occur or become discernible.
- c. In the event of default of delivery, the SUPPLIER is obligated to payment of a contractual penalty in the amount of 1% of the value of the consignment for each and every week of default; however, the penalty shall not in the aggregate exceed 5% of the net value of the compensation agreed for the delivery in default. Any more extensive contractual or statutory rights and claims owing to default (especially, but not limited to, rescission and damage compensation) will be governed in accordance with legal statutes. The contractual penalty will be offset against any more extensive damage compensation.
- d. Unforeseeable, unavoidable events of major significance ("force majeure") release the parties from their performance obligations for the duration of the disruption. The above provision applies as well if and when such events occur at a point in time at which the affect party is in default of performance. The parties will notify each other without delay to the extent reasonable and will adjust in good faith their obligations in accordance with the changed conditions.

## 4. Shipping, Packaging, and Identification

- a. Deliveries shall be made DDP in accordance with the most recently revised INCOTERMS<sup>®</sup>. A delivery note showing the BAUMER order number, the description of the identity of the contents, and quantity shall be included with each and every consignment. Additional documents specified by BAUMER or required by legal provisions shall be included as necessary.
- b. Partial delivery is subject to the consent of BAUMER. If and when the SUPPLIER makes partial deliveries without the consent of BAUMER, the delivery performances shall not be deemed in conformity with the contract until they have all been completed.
- c. The SUPPLIER must label the parts or the packaging to ensure the unambiguous tracking of the parts for purposes of identification and classification. Whenever possible, parts will be labeled in consultation with BAUMER. The packaging units must be labeled adequately.

## 5. Prices, Invoices, and Payment

- a. The agreed prices are fixed prices. They include packaging and shipping costs, any and all customs duties, taxes, and other charges levied up to the place of performance. All prices are shown excluding current value-added tax.
- b. To the extent relevant for the SUPPLIER, one-off expenses for tools, stencils, programs, adapters, etc. must singly be offered in separate quotations.
- c. Invoices must show the order number, identification number, quantity, and itemized price and must in all other respect satisfy legal requirements with respect to content.
- d. Payment will be made by BAUMER within 30 days after completion of performance and BAUMER's receipt of a properly issued invoice.
- e. Payments do not represent acknowledgment of the conformity of the delivery or performance with the contract. In the event of defective delivery or performance, BAUMER is entitled to retain payment proportionate to value until proper fulfillment.

## 6. Passing of Title and Risk

Title to the Products passes to BAUMER upon delivery to the designated place of delivery. Risk passes in accordance with the agreed INCOTERMS<sup>®</sup>.

## 7. Quality, Safety, and Environmental Protection Requirements and Product Modifications

- a. The SUPPLIER shall ensure that its deliveries and performances are in compliance with state-of-the-art science and technology, legal regulations, safety and environmental protection provisions (including the REACH and RoHS directives as most recently revised) and the agreed specifications. By submitting a quotation, the SUPPLIER confirms that the product is in conformity with any and all regulations of the country at the shipping address.

- b. The SUPPLIER is obligated to determine and comply with the most recent revisions of any and all regulations and laws related to substance restrictions applicable to its components. It is obligated not to utilize prohibited substances. The SUPPLIER shall identify in the specifications any substances that are to be avoided and dangerous substances as defined in applicable laws and regulations. If relevant, safety data sheets shall be submitted with any quotations and, for initial delivery, with the delivery note (in German or English as a minimum).
- c. BAUMER shall be notified without delay whenever restrictions of substances are exceeded and prohibited substances are delivered.
- d. The SUPPLIER shall establish a quality management system, maintain records, archive said records for a minimum of 10 years, and present them upon request.
- e. If and when the SUPPLIER determines the existence of defects which may be relevant for parts which have previously been delivered, it shall immediately notify the incoming goods inspection department/quality department at BAUMER and describe any initiated actions.
- f. Subject to prior timely agreement, BAUMER may, accompanied by the SUPPLIER, inspect the SUPPLIER's production areas relevant for the manufacture of the Products.
- g. The SUPPLIER shall without delay and in advance notify BAUMER in TEXT FORM of any and all planned modifications of the SUPPLIER's performance in comparison with the order or in comparison with previous deliveries, especially, but not limited to, changes in the manufacturing process or product specifications as a consequence of changes in production, raw materials, procedures, or technology. BAUMER may in such cases modify the order or rescind the contract.

## 8. Subcontractors

Production contracts for the manufacture of Products based on drawings from BAUMER ("drawing parts") may not be outsourced to subcontractors without BAUMER's consent in TEXT FORM. The SUPPLIER's liability for its subcontractors is equivalent to its own.

If and when BAUMER has designated subcontractors, this does not release the SUPPLIER from its responsibility to monitor the quality of the procured products and to assess and to develop said subcontractors.

## 9. Warranty for Material and Legal Defects, Liability for Damage Compensation, Insurance, Limitation Periods

- a. BAUMER is not obligated to conduct inspections upon receipt of consignments and is to this extent exempted from the statutory obligations for inspection and submission of complaints.
- b. In a warranty case, BAUMER may request or initiate the following steps, any and all statutory warranty rights notwithstanding:
  - If defective parts are determined in the consignment or during series assembly, the SUPPLIER will have the opportunity (after receiving information from BAUMER in TEXT FORM) to collect at its own expense the defective Products and to deliver replacements or sort out the defective parts and/or rework them.
  - BAUMER may return any Products which have not been delivered in conformity with the contract at the SUPPLIER's expense and risk, unless the SUPPLIER wishes to collect the products and does so immediately.
  - If time pressures prohibit return shipment and replacement, the SUPPLIER must, upon request by BAUMER (in TEXT FORM) and at its own expense, sort out the scope of the parts suspected of being defective on site at BAUMER within 24 hours.If the SUPPLIER does not meet this request, the quantities required to maintain delivery capability will be sorted out by BAUMER employees or external service providers (substitute performance) in accordance with information from the SUPPLIER (in TEXT FORM), provided that the subsequent performance is not unreasonable for the SUPPLIER. The SUPPLIER will bear any costs incurred thereby.
  - If and when a series defect results in the necessity to replace an entire series of Products or the BAUMER products in which the Products have been installed (for instance, because a defect analysis in the specific case is uneconomical, impossible, or unreasonable), the SUPPLIER will also reimburse the costs related to parts of the affected series which do not technically contain any defects.
  - Any and all loss or damage incurred by BAUMER or third parties as a consequence of defective Products will be borne by the SUPPLIER.
- c. The SUPPLIER shall define and implement actions for each and every complaint of defects and submit a statement to BAUMER.
- d. The SUPPLIER bears any and all costs incurred for required recall or service actions to the extent that the recall or service actions carried out by BAUMER were actually required because of defects in the SUPPLIER's Products.
- e. Should third parties — regardless of their legal grounds — justifiably assert claims against BAUMER pursuant to a material or legal defect or other defect in the SUPPLIER's delivery or performance, the SUPPLIER is obligated, upon first request, to indemnify and hold harmless BAUMER from and against any and all liability.
- f. The SUPPLIER shall maintain product liability insurance cover for personal injury and material damage sufficient to cover any possible product liability risks beyond the scope of its standard public liability insurance policy. Upon request, it will present copies of the insurance policies to BAUMER. The above provision is without prejudice to any more extensive damage compensation claims to which BAUMER is entitled.
- g. The warranty period for material and legal defects is 36 months as of the passing of risk. The warranty period will be suspended for the period of time between the dispatch of a legitimate notification of defects and (i) proper subsequent performance by the SUPPLIER, or (ii) the SUPPLIER's refusal to carry out subsequent performance. The warranty period will commence anew in the event of subsequent delivery.

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## 10. Offset

BAUMER is entitled with respect to the SUPPLIER to offset its own claims arising from the business relationship against the SUPPLIER's claims or to assert rights of retention.

## 11. Production Materials

- a. BAUMER retains title to any and all technical documents, worksheets, models, templates, stencils, samples, testing equipment, tools, and other production materials (hereinafter: "Production Materials") that it has provided. Title of ownership to any Production Materials procured or manufactured by the SUPPLIER at BAUMER's expense for performance of the supply contract accrues to BAUMER.
- b. BAUMER holds any and all rights to Production Materials that BAUMER has paid for or made available to the SUPPLIER. The SUPPLIER is authorized to dispose of any such Production Materials, whether materially or legally, to change their location, or to make them permanently unusable solely with the express consent of BAUMER.
- c. Reproductions of the Production Materials may not be prepared without BAUMER's consent in TEXT FORM. The SUPPLIER may not make Production Materials or their reproductions available to third parties or use them for other purposes without consent in TEXT FORM.
- d. Production Materials, including any and all duplicates that have been prepared, shall automatically be returned to BAUMER upon completion of the order.
- e. Production Materials that have been provided to the SUPPLIER for its longer-term retention and for performance of the supply contract shall be clearly labeled "Property of BAUMER".
- f. The SUPPLIER shall use the Production Materials solely and exclusively for the fulfillment of the supply contract with BAUMER and shall handle them with care; in particular, it shall obtain at its own expense adequate insurance cover for fire and water damage and theft and shall carry out any required maintenance and inspection work at its own expense in good time.
- g. Production Materials shall be returned to BAUMER without delay at any time upon its request; reasons for the request are not required. The SUPPLIER does not have a right of retention because of outstanding payment for procured or manufactured Production Materials.
- h. Any Production Materials remaining with the SUPPLIER after shipment of the final products produced using these materials may be destroyed solely with BAUMER's prior consent in TEXT FORM. The SUPPLIER may request that BAUMER accept return of the remaining Production Materials.

## 12. Third-party Property Rights

- a. The SUPPLIER is accountable for the freedom of any and all deliveries and/or services from third-party rights and for lack of infringement on any patents, utility models, registered designs, or any other intellectual property rights, whether in Germany or abroad, by the Products or their use in accordance with the contract, unless the SUPPLIER is not at fault.
- b. The parties covenant to notify each other without delay of any risks of infringement and of alleged cases of infringement which become known to them. Moreover, they covenant to give each other the opportunity to defend against any such claims in mutual action.
- c. If and when BAUMER's utilization of the Products is impaired by the existence of third-party intellectual property rights, the SUPPLIER shall, at its own expense, either acquire the necessary license, or modify or replace the affected parts of the delivered products in such a manner that the utilization of the Products is no longer impaired by third-party intellectual property rights while simultaneously the compliance of the Products with the contractual agreements is assured.
- d. The SUPPLIER shall, upon request, assign to BAUMER in return for reasonable compensation any and all inventions or other transferable work results related to the execution of a contract concluded between the parties, provided said inventions or work results are suitable for protection by intellectual property rights or their suitability for such protection cannot be excluded. The SUPPLIER must, if legally necessary, take effective legal action to obtain the rights to inventions from its employees.

## 13. Code of Conduct

- a. The SUPPLIER is familiar with, and is committed to, the ethical and legal principles as embodied in the "Code of Conduct for Commercial Activities of the Baumer Group" and complies with them. The BAUMER Code of Conduct can be viewed under "Code of conduct" at [www.baumer.com/procurement](http://www.baumer.com/procurement).
- b. The SUPPLIER requires equivalent ethical and legal principles from its own suppliers.

## 14. Confidentiality

The SUPPLIER covenants to maintain strict confidentiality with respect to any and all commercial and technical details which are not self-evident and which become known to it through the business relationship, in particular, but not limited to, documents provided by BAUMER such as models, drawings, plans, illustrations, and similar documents. They may not be disclosed to third parties without BAUMER's express written consent. The SUPPLIER covenants to safeguard any and all data received from BAUMER in a place protected from third-party access.

## 15. Severability

Should any provision of these Terms and Conditions of Purchasing or a part of such a provision be or become invalid, the validity of the remaining provisions will not be affected. The invalid or unenforceable provision is to be replaced by a valid and enforceable regulation that comes closest in its effect to the commercial intent pursued by the parties in concluding the invalid or unenforceable provision. The above provision applies mutatis mutandis in the event of an omission.

## 16. Proper Law, Venue

- a. The legal relationships between BAUMER and the SUPPLIER are governed in their entirety solely and exclusively by the laws at the headquarters of the contracting BAUMER company.
- b. Application of the rules of conflict of law in international private law and of the UN sales law (CISG, also known as the Vienna Sales Convention) is excluded.

- c. Sole and exclusive venue for any and all disputes arising from or with respect to the business relationship between BAUMER and the SUPPLIER is the headquarters of the contracting BAUMER company or, at BAUMER's option, the SUPPLIER's headquarters.